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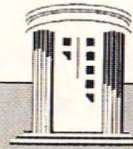


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DANIEL R. COQUILLETTE

RARE BOOK ROOM

BOSTON COLLEGE LAW LIBRARY

Dedication

May 29, 1996

EXHIBIT CATALOGUE

Please do not remove from Rare Book Room

Introduction

*The lawyers, Bob, know too much. They are chums
of the books of old John Marshall.*

—Carl Sandburg

Lawyers and books have kept each other company for centuries. Large, weighty, gilt-lettered volumes transmitted the legal wisdom of the Roman world. Books designed to fit in a pocket or saddle-bag provided knowledge of the law to the many untrained English and American justices of the peace. Leather-bound editions by famous judges communicated an idyllic vision of the law to generation after generation of law students. Inexpensive manuals designed by practicing lawyers warned the unwary young lawyer of the complexities of pleading and practice.

As electronic media becomes increasingly part of everyday lawyers' lives, law school libraries are moving rapidly to ensure that this book-bound legal past does not disappear. In honor of the dedication of the Daniel R. Coquillette Rare Book Room, Boston College Law School is proud to present the following exhibit in two parts, displaying the uses of "rare books" in the legal profession.

Cases I and VIII contain rare law books used by members of the Boston College Law School faculty in their scholarship. These cases display the breadth of rare book materials collected: 500 year old volumes, statute books, commentaries, and even modern reprints. These cases also reveal the diverse scholarship that arises from rare books: family law, jurisprudence, environmental law, commercial law, copyright law—and legal history.

Cases II-VII contain rare books used by Professor Coquillette in a number of articles and books that relate to the English civilians and their influence. Some of these books are by early English civilians; others were actually owned by early civilians. There is a picture of Doctors' Commons "in action" from the famous Microcosm of London (1808), vol. 1, 224 (pub. Rudolf Ackermann, artist Thomas Rowlandson). Also included are books that were caught up in the violent conflicts over

ideology that preceded the English Civil War, including two copies of the famous law dictionary of John Cowell (1554-1611). One of these copies, the 1607 first edition, is one of the very few that escaped being burned by royal proclamation. There is a rare copy of the catalogue of the Doctors' Commons Library, and even three books that were in the famous library itself.

The Boston College Law School is grateful to the private individuals and libraries that made materials available to supplement the Law School's collection. This exhibit was made possible by the assistance of Daniel Coquillette, Sharon O'Connor, Michael Chiorazzi, Mary Sarah Bilder, Ann McDonald, Michael Mitsukawa, Joan Shear, Page Nelson-Saginer, Tracy Catapano, Karen Bruntrager, and those members of the faculty represented.

Daniel R. Coquillette and the Civilians

The English bar did not — originally — consist solely of common lawyers. In fact, the law taught in the Universities was, for centuries, the Roman-based "civil" law and the related canon law of the Catholic Church. The university trained "civil" lawyers were not just academics. They had important practices in London centered around "Doctors' Commons," and had monopolies in some important courts, including the Admiralty. These "civilians" were firmly entrenched by Henry VIII, and were a professional force as early as 1523.

They were to last for more than three centuries. In 1858, Doctors' Commons was finally dissolved, and the Library, one of the finest in Europe, was dispersed.

The English "civilians," although officially "extinct," had a profound influence on the development of Anglo-American law. They were pioneers in the law of trade and commerce, and also took over the old Church jurisdictions concerning marriage and divorce, as well as wills and trusts not relating to land. They were the first English students of comparative and international law.

Some of the most important civilian ideas were eventually "incorporated" into common law doctrines by distinguished judges such as Francis Bacon and Lord Mansfield. The first settlers in Massachusetts looked to civilian models in their radical new codes, and even John Adams was an avid student of civilian texts, and relied on them in his law practice in the Massachusetts Vice Admiralty Courts and in his political writings. Finally, all university programs in law ultimately look to this tradition for their roots.

Professor and former Dean Daniel Coquillette has published numerous articles and books on the English Civilian Jurists and their Disciples. These include four articles on the civilians in the *Boston University Law Review*: "Legal Ideology and Incorporation I: The English Civilian Writers, 1523-1607," 61B. U. L. Rev. 1-89 (1981); "Legal Ideology and

Incorporation II: Sir Thomas Ridley, Charles Molloy, and the Literary Battle for the Law Merchant, 1607-1676," 61*B. U. L. Rev.* 315-371 (1981); "Legal Ideology and Incorporation III: Reason Regulated — The Post-Restoration English Civilians, 1653-1735," 67*B. U. L. Rev.* 289-361 (1987); "Legal Ideology and Incorporation IV: The Nature of Civilian Influence on Modern Anglo-American Commercial Law," 67*B. U. L. Rev.* 876-907 (1987). Two other articles discuss the civilians: "Justinian in Braintree: John Adams, Civilian Learning, and Legal Elitism, 1758-1775," in *LAW IN COLONIAL MASSACHUSETTS, 1630-1800: A CONFERENCE HELD 6 AND 7 NOVEMBER 1981, BY THE COLONIAL SOCIETY OF MASSACHUSETTS*, 359-418 (Boston: The Society, 1984); "Radical Lawmakers in Colonial Massachusetts: The 'Countenance of Authority' and the *Lawes and Libertyes*." *The New England Quarterly* 67 (June 1994): 179-206. [Also appears in *Studi in Memoria Di Gino Gorla, 1605-1633. Tomo II: Dialogo Tra Ordinamenti Diritto dei Commerci E. Diritto Europa Iura Naturalia E. Diritti Fondamentali*. Italy, 1994, and in translation as "Giuristi Radicali Nel Massachusetts Coloniale: 'Countenance of Authority' Lawes and Libertyes." In *Il Diritto dei Nuovi Mondi: Atti del Convegno promosso dall'Istituto di Diritto Privato delle Facoltà di Giurisprudenza*: Genova, 5-7 Novembre 1992, 113-143. Milan: Casa Editrice Dott. Antonio Milani, 1994.] In addition, Professor Coquillette has written two books on the civilians: *THE CIVILIAN WRITERS OF DOCTORS' COMMONS*, LONDON: THREE CENTURIES OF JURISTIC INNOVATION IN COMPARATIVE, COMMERCIAL AND INTERNATIONAL LAW (Berlin: Dunker & Humblot, 1988) and *FRANCIS BACON* (Stanford, CA: Stanford University Press, 1992).

Display Case

DIGESTORUM SEV PANDECTARUM LIBRI QUINQUAGINTA
EX FLORENTINIS PANDECTIS IN OFFICINA LAURENTII
TORRENTINI DUCALIS TYPOGRAPHI MDLIII
(FLORENCE, 1553). Gift of Daniel R. Coquillette

This magnificent volume is part of Cosimo the Great's first printed edition of the most important Roman law manuscript, the famous "Florentine" or "Pisan" *Pandects*. To prevent theft, the book was published so that it could not be easily carried. In the eighteenth century, the book was divided and rebound into three thinner volumes. The other two volumes are displayed in a case outside of the Rare Book Room.

The original text of the edition dates from 533 A.D. when a team of legal scholars, working under the direct orders of the Emperor Justinian (A.D. 483-565), completed a digest or summary of all known Roman law texts. This epic work, which became known as the *Digest* or *Pandects* of Justinian, attempted to purge and resolve all inaccuracies and contradictions in the law. For centuries, Justinian's *Digest* remained the ultimate source of the Roman law. Its influence on European civil law, public international law, the canon law of the Catholic Church, and the law merchant of all nations has been of incalculable importance.

Early texts of the *Digest*, however, were extremely rare. Following the completion of the epic work, Justinian had ordered all the older texts destroyed and few texts of Justinian's *Digest* survived. A beautiful manuscript of the *Digest* was written no "later than the seventh century" and "more probably the second half of the sixth." According to legend, the manuscript was captured from the Arabs at Amalfi. Whatever the provenance, for centuries the city of Pisa held the text as one of its prize possessions, hence the name the "Pisan" *Pandects*. In 1406, however, Florence defeated Pisa in fierce fighting, and captured the *Pandects*. The *Pandects* were held up before the returning victorious Florentine troops as a symbol of victory.

Following their capture, the *Pandects* became the special treasure of the powerful Medici family of Florence, who referred to them henceforth as the "Florentine" *Pandects*. Lorenzo de Medici (1449-1492) was a great collector of books, and the "Florentine" *Pandects* formed the core of his

famous Laurentian Library. For the Medici collection, Michelangelo (1475-1564) built the magnificent library building beside the family church of San Lorenzo. To this day, the great manuscript resides there.

With the Laurentian Library complete in 1534, the Medici dukes turned to plans for creating the first printed edition of the priceless Pandects. The work of transcribing the manuscript and setting the type took more than 12 years, from 1541 to 1553. The task was entrusted to the Duke's own printers, the Torrentini. The book is a monument of Renaissance printing and Italian design. Its final publication in 1553 was a special matter of pride to Cosimo I (1519-1574), "Cosimo the Great." The Medici arms appear on the front and back of the book.

The legal importance of this book is threefold. First, it remains one of the most authoritative printed texts of the great Digest of Justinian, which, in turn, remains one of the greatest law reform projects of all time. Second, the great scholarly effort in producing this book marks the beginning of the scientific study of legal history, and the start of truly critical legal scholarship. Finally, the production of the "Florentine" Pandects demonstrates the importance of law as a humanistic study in the High Renaissance.

One should not overlook the art of this book. The typography, the magnificent episodes from Greek mythology worked into the initials, the scenes of Renaissance horsemen galloping and the beauty of the overall design remain as fresh and enduring today, as four and a half centuries ago.

References

See H.F. Jolowicz, Historical Introduction to the Study of Roman Law, Cambridge, 1954, 490-502; Kantorowicz, "Über die Entstehung der Digesten Vulgata", Zeitschrift der Savigny - Stiftung Für Rechtsgeschichte, Romanistische Abterlung, vol. XXX, 183-271; vol. XXXI, 14-83.



DANIEL R. COQUILLETTE RARE BOOK ROOM

CABINET I

BOOKS AND FACULTY SCHOLARSHIP
BEFORE THE REVOLUTION

CODEX JUSTINIANI CUM APPARATU (Andr. Frisner
Wunsiedel & Joh. Sensenschmid, 1475).

Professor Ruth-Arlene Howe's article, "Adoption Practice, Issues, and Laws 1958-1983" (1983), explained that the "practice of adoption is traceable back to antiquity." The Code of Hammurabi (2285 B.C.) is one of the earliest recorded provisions for adoption. Justinian's Institutes (c. 530) also contains provisions relating to adoption. "By the time of Justinian, about 500 years after Christ, the individual was regarded much more clearly as a member of society than as a member of his family. This shift in allegiance and loyalty was reflected generally in Justinian's code of law. Specifically with regard to adoption, Justinian introduced a simpler proceeding before a magistrate in which the adopter, the adopted, and the natural family head were all required to participate. Under Justinian's code the adoptee could and usually did retain the right of inheritance from his birth father even after the adoption. Although the strength of the nuclear family was replaced by the power of the larger society, the adoptee's retention of the right of inheritance from his birth father recognized the emotional importance of a person's origins and heredity. Today this Justinian approach would be called an "open adoption" with no secrecy."

This edition of Justinian's Institutes dates from 1475 and is written in Latin. Published in Nuremberg, Germany twenty years after Gutenberg's famous printed Bible, the entire volume was printed in black and red ink in four columns. This book is an example of "incunabula," books printed during the first fifty years of printing. The size of the volume, the heavy leather and wood binding, and hinged clasps indicate the value of the book to its original owners. Extremely old books actually have survived better than nineteenth-century editions because of the lack of acid in the paper.

Book I-2

THE INFANTS LAWYER: OR, THE LAW (BOTH ANCIENT AND MODERN) RELATING TO INFANTS (London: Assigns of R. & E. Atyns for Robert Batterson, 1697).

Professor Sanford Katz has long been interested in the historical development of family law. This fall, Professor Katz will travel to All Souls College, Oxford University to research the historical development of the laws of adoption. While our collection contains a few significant works, like the Infants Lawyer, his stay at Oxford will allow him access to a wealth of ancient legal materials. The book is one of the earliest known treatises on the rights of children in English law. The page opened discusses the rights of orphans.

Book I-3

THE CONTINUATION OF THE LAWS OF JAMAICA: PASSED BY THE ASSEMBLY, AND CONFIRMED BY HIS MAJESTY IN COUNCIL, DECEMBER 26th 1695; BEING THE SECOND VOLUME OF SAID LAWS (London: Charles Harper & Samuel Crouch, 1698).

Professor Mary Sarah Bilder used this collection of laws in her article "The Struggle over Immigration Power: Articles of Commerce, Indentured Servants, and Slaves" (1996) to demonstrate that the legal system in colonial America believed that the category of "articles of commerce" included immigrants who arrived in the colonies as indentured servants. For example, one of the laws in this volume, "An Act to Reimburse their Majesties Treasury, and Incurage Their Subjects to come and Settle in this Island," discussed both immigrants and wines as imported goods.

The London publication demonstrates the apparent legal power of the colonial English empire. Under English law, the colonies had to submit their statutes to the Privy Council in London to be reviewed for conformity to English law. In reality, London's power was weak. Many colonies manipulated the time delay involved in shipping statutes across

the Atlantic Ocean. If a colony learned that a statute might be disallowed by the Privy Council, it would pass a new version of the statute immediately before the Privy Council's decision of disallowance reached the colony. The new statute would then have to be sent off to England again. In this fashion, the colonies technically kept laws in effect that the English authorities disliked.

Book I-4

Thomas Hutchinson

THE HISTORY OF THE PROVINCE OF MASSACHUSETTS-BAY, FROM THE CHARTER OF KING WILLIAM AND QUEEN MARY IN 1691, UNTIL THE YEAR 1750 (2d ed., London: J. Smith, 1758).

Professor Sanford Fox, in his book, Science and Justice: The Massachusetts Witchcraft Trials (1968), did exhaustive research into colonial records and histories which recorded the Salem witchcraft trials. The exhibited book is one of the early histories of the Massachusetts-Bay colony upon which Professor Fox relied.

Book I-5

William Blackstone

COMMENTARIES ON THE LAWS OF ENGLAND (Oxford: Clarendon Press, 1765).

Blackstone's Commentaries are a key text for analyzing eighteenth-century American and English law. In "Restoring the Natural Law: Copyright as Labor and Possession" (1990), Professor Alfred Yen used Blackstone to demonstrate the importance of possession to the creation of property in old English law. Dean Aviam Soifer explored Justice Marshall's adoption of Blackstone's technical definition of "contract" in his recent book, Law and the Company We Keep (1995).

A number of copies of William Blackstone's Commentaries (1765) exist in the United States. Blackstone was far more popular in the American colonies than in England. John Quincy Adams noted that Edward Coke's earlier widely-read legal commentary "contains a vast mass of law learning but heaped up in such an incoherent mass that I have derived very little benefit from it." Thomas Jefferson echoed these thoughts: "I do wish the Devil had old [Coke] for I am sure I never was so tired of an old dull scoundrel in my life." Unlike Coke, Blackstone systematically arranged the law under broad subject headings — much like modern legal outlines. Adams believed that Blackstone was "an inestimable advantage to the late students of the profession." Adams would prove to be correct. Blackstone became one of the most important influences on early American legal development. Close to 1000 copies of this edition of Blackstone were imported into the colonies. The first American edition (1771-73) was even more popular — the approximately 1500 subscribers included farmers, merchants, lawyers, 16 future signers of the Declaration of Independence, and 6 future drafters of the Constitution.



DANIEL R. COQUILLETTE RARE BOOK ROOM

CABINET II

THE FOUNDATION AND THE HERITAGE:
EARLY CIVILIAN SOURCES

Book II-1

DECRETALIA of Pope Gregory IX (Nuremburg, 1496).

There were two great influences on the civilians. One influence was canon law. The Decretals of Gregory IX is the first systematic and authentic general collection of papal rulings on canonical discipline. Until 1918, this collection was part of the official code of canon law. Canonists used the method of glosses to interpret the text. The original text appears in the center. The commentary ("gloss") surrounds the text. In this edition, the red and black print has been supplemented with handinked blue capitals throughout the text.

Book II-2

INSTITUTIONES IMPERIALES (Paris: Johan Ravesberch, 1507).

The other great influence on the civilians was the roman law. The most famous text of the roman law was actually an elementary law textbook ("institutiones") authorized by the Emperor Justinian (483-565). This copy of Justinian's Institutes was printed in France. The illustration shows the bishops on the left and the ermine-cloaked civil authorities on the right. The ruler sits in the middle with the symbols of power—the sword in his right hand, indicating secular authority, and the orb in his left hand, indicating the world dominated by Christianity. The cross above the orb indicates that the ruler in this picture is a Christian emperor—either the Holy Roman Emperor or perhaps even Justinian. The text on the facing page describes the secular and religious power of the ruler.

Book II-3

Christopher St. German

DOCTOR AND STUDENT (London, 1554).

The first great English writer to attempt to bridge the gap among common law doctrine, learned academic law, and political and moral theory was Christopher St. German (1457-1539). His famous work, Doctor and Student, involved a friendly debate between a Doctor of Divinity (a university-trained scholar in canon law, theology, and Latin) and a "Student in the Lawes of England" (an English common law student of Year Book law). St. German emphasized that the universities and the common lawyers were speaking different languages. His dialogue format was designed to show that communication would be mutually valuable. Although the first edition of Doctor and Student appeared in Latin (1523), many later editions, including the one on display were published in English. The choice of a language readily understandable by common lawyers made the book's canonist learning accessible and influential, particularly in the area of equity.

Book II-4

**INSTITUTIONES JURIS CIVILIS JUSTINIANO (Marpurgi:
Hermannii Vultesi ed. 1613).**

This copy of the Institutes appears to have been in a Jesuit library. The seal of the Society of Jesus appears in the center on the front cover. "I.H.S." are the first three letters in Greek of the name Jesus.

Book II-5

INSTITUTIONUM . . . JUSTINIANI (Paris: Gulielmum Merlin & Gulielmum Desboys, 1559)

Like many members of Doctors' Commons, Dr. Robert Byshop, D.C.L. collected Roman law books. This volume of Justinian appears to have been acquired in 1563. It is part of a larger set of the Corpus Juris, which included all the legal works authorized by Justinian—the Institutes, the Digest, the Code, and the Novels. The blank pages at the beginning of the volume contain a handwritten summary of the volume's contents. Byshop had the book bound for his own library—his initials appear embossed on the front leather cover. "D.C.L." refers to the degree of Doctor of Civil Laws. The degree was required for admission to Doctors' Commons.



DANIEL R. COQUILLETTE RARE BOOK ROOM

CABINET III

PIONEERS IN RENAISSANCE SCHOLARSHIP
AND COMPARATIVE LAW: BOOKS BY THE
EARLY ENGLISH CIVILIAN JURISTS

Books III-1 & 2

Sir Thomas Smith, D.C.L.

THE COMMONWEALTH OF ENGLAND (London: Will Stansby for I. Smethwicke, 1633).

DE REPUBLICA ANGLORUM (Lug. Batavor, 1641)
(Elzevir Press).

Sir Thomas Smith (1513-1577) was the initial appointee to the Regius Professorship of Civil Law at Cambridge in 1540. He then lost the position and was imprisoned in the Tower of London. He reentered public life as a diplomatist for Elizabeth I. As her ambassador to France from 1562 to 1565, he wrote a detailed comparative examination in English of the English legal system, *De Republica Anglorum*. The manuscript remained unpublished until 1583, six years after Smith's death. The book was a remarkable success in England and abroad. Smith's civilian analysis focused on defined authority and disregarded medieval notions of natural law. Smith is typical of the civilians' pioneer efforts in international and comparative law. The English edition appears on the left; the French edition in Latin on the right.

Book III-3

Alberico Gentili

DE IURE BELLII (Hanoviae: Haerdes Guilielmi Antonii, 1612).

Alberico Gentili (1552-1602) escaped from Italy to England when Protestants came under attack as heretics during the Inquisition. In 1586 he became the Regius Professor. He was an early pioneer of public international law. *De Jure Belli* was first published in three parts in London in 1588-89. The book focuses on factual data about customary law and sought to describe actual customary dealing among nations. Gentili advocated a secular, universal doctrine based on the "great commonwealth of mankind." The book was placed on the *Index* of heretical books in 1603. Gentili never joined Doctors' Common, perhaps because of the members' continued close ties to religious law.

Book III-4

William Fulbecke

A PARALLELE OR CONFERENCE OF THE CIVIL LAW, THE CANON LAW, AND THE COMMON LAW OF THIS REALME OF ENGLAND (London: Company of Stationers, 1618).

Gentili's student, William Fulbecke (1560?-1603), also became an advocate of comparative law study. This book is considered Fulbecke's most important work. This book was written entirely in English, and was directed at the English national law, not at the law of nations. He also wrote the book as a set of dialogues between four representative characters: Nomomathes (a rich and "liberally minded" sponsor), Canonologus (a canon lawyer), Codicgnostes (a civilian), and Anglonomophylax (a common lawyer). The objective of this book was to discuss the agreement and disagreement of the three laws, canon, civil, and common, and the causes and reasons for these agreements and disagreements.

Fulbecke's purpose was to compare and to synthesize canonist and civilian principles with the principles of the common law. His approach, however, led him to flit from one subject to another, and from one system to another, avoiding hard issues.

Books III-5 & 6

John Cowell, LL.D.

THE INTERPRETER, OR BOOKE CONTAINING THE SIGNIFICATION OF WORDS (Cambridge: John Legate, 1607).

THE INTERPRETER OF WORDS AND TERMS, USED EITHER IN THE COMMON OR STATUTE LAWS OF THIS REALM (London: Thomas Manely ed., J. Place for A. & J. Churchil and R. Sare, 1701).

As the Regius Professor from 1594-1611, John Cowell (1554-1611) chose a new device to explore civilian ideas. He wrote a law dictionary. The Interpreter is considered perhaps the most famous law dictionary in English legal history. It is believed that Cowell chose the dictionary

device because it seemed a noninflammatory vehicle for expressing ideas. Cowell's book, however, created a massive outcry. Some of the definitions written by Cowell were deemed offensive, including "King," "Parliament," "Admirall," and "Prerogative of the King." Common lawyers believed that Cowell was advocating that the King held absolute power and was above the law. Cowell, for example, seemed to imply that the two great writs for restricting ecclesiastical and conciliar court jurisdiction were no longer necessary. The Interpreter was suppressed by royal proclamation. The copy displayed here is one of the few surviving copies left after most were burned. Despite its initial suppression, The Interpreter became extremely popular, and went on to become one of the most popular of all the early English law books, going through more than twelve editions before 1727. The edition on the left is open to pages in which the owner has added words omitted from the dictionary.



DANIEL R. COQUILLETTE RARE BOOK ROOM

CABINET IV

THE BATTLE OVER THE LAW MERCHANT
AND THE IDEOLOGICAL STRUGGLE OVER
LEGAL AUTHORITY: THE SEVENTEENTH
CENTURY CIVILIANS

Books IV-1, 2, 3

Sir Thomas Ridley, D.C.L.

A VIEW OF THE CIVIL AND ECCLESIASTICAL LAW
(Oxford, 1676).

Arthur Duck, D.C.L.

DE USU & AUTHORITATIVE JURIS CIVILIS ROMANORUM
(London, 1679).

Sir Robert Wiseman, D.C.L.

THE LAW OF LAWS (London, 1686).

The first of these three authors represents the "second generation" of civilians. As the political situation in England deteriorated and the common law bench surged into power under Sir Edward Coke, the civilians became increasingly defensive and utilitarian in outlook. They sought desperately to maintain control of certain jurisdictions. For example, in 1607, Sir Thomas Ridley (1549-1629) wrote A View of the Civil and Ecclesiastical Law. The work argued for a specialized international civilian law merchant that would stand apart from the common lawyers.

Between 1650-1656, during the Interregnum, the "third generation" of civilians rose. One of these men was Arthur Duck (1580-1648), a fierce loyalist to Charles I who donated 6000 pounds to the King and then died suddenly in 1648. Yet his posthumously published book, De Usu & Authoritative Juris Civilis Romanorum (1653) undercut the authority of the crown by emphasizing the need for "consent" in government. Moreover, his book argued that the civil law had been relied on for years by great common lawyers and was better suited for equitable and specialized commercial jurisdictions. In The Law of Laws, Sir Robert Wiseman (1613-1684), a better jurisprudent than Duck, argued that the civil law was often superior because it was a more exact, scientific process.

Richard Zouche, D.C.L.

CASES AND QUESTIONS OF RIGHT AND JUDICATURE
RESOLVED IN THE CIVIL LAW (Oxford, 1652).

ELEMENTA JURISPRUDENTIAL (Amsterdam, 1652)
(Elsivir Press).

John Godolphin, D.C.L.

A VIEW OF THE ADMIRAL JURISDICTION (London, 1685).

The last of the civilian writers of the Interregnum was Richard Zouche (1590-1662). Known first for a silly poem, "The Dove, or Passages of Cosmography," Zoache went on to become one of the most systematic (and perhaps one of the most boring) civilian writers. Zoache set out in a series of works—beginning with Elementa Jurisprudential (1629)—to show "the foundations of Law and Procedure in accordance with the principle of human community." The Restoration brought a new set of civilians to the stage. John Godolphin (1617-1678) was a lifelong devotee to the Puritan cause. Appointed to the Admiralty Court in 1653, Godolphin was not reappointed with the Restoration but returned to private practice. During these years, he wrote A View of the Admiral Jurisdiction, a collection of maxims about admiralty courts that ran from mythical Rhodian law to Selden. But throughout the various discussions one theme emerged: a profound belief that the admiralty courts with their civilian jurisprudence and mercantile custom were justified by "universal concurrency" and "a kind of necessity," which required all nations to observe certain rules or laws so that their citizens could trade with one another.

Thomas Wood, D.C.L.

A NEW INSTITUTE OF THE IMPERIAL OR CIVIL LAW
(London, 1712).

William Strahan, LL.D.

CIVIL LAW IN ITS NATURAL ORDER (London, 2d ed. 1737).

John Ayliffe, LL.D. [Deprived]

A NEW PANDECT OF ROMAN CIVIL LAW (London, 1734).

By 1688, the civilians had lost their century-long battle over the Admiralty courts. The "fourth generation" of civilian jurists retreated into scholarly works. Three writers kept the civilian world alive to influence the great eighteenth-century writers like Lord Mansfield. Thomas Wood (1661-1722) used his civilian training to organize the common law in An Institute of the Laws of England to such success that it went through ten editions in fifty years. He also compared the civil law and the common law in a book designed for university students: A New Institute of the Imperial or Civil Law. In 1722, William Strahan continued this effort to make civilian doctrines accessible to lawyers and policy makers by translating Jean Domat, Les Lois Civiles dans leur Ordre Naturel, Suives du Droit Public (1689). To Domat's organization of the civil law under modern headings, Strahan added a brilliant introduction that argued for the incorporation of civil law in the minds of educated lawyers. John Adams, Joseph Story, William Mansfield, and Jeremy Bentham all took heed. The last of these men, John Ayliffe (1676-1732), had a sufficient number of fights with Oxford that it ultimately expelled him and deprived him of all privileges and degrees. (For example, Ayliffe threatened to "pistol" the Warden of Oxford.) Nonetheless, Ayliffe composed "the most elaborate treatise on modern Roman law written in English": A New Pandect of Roman Civil Law. Ayliffe died before completing the Pandect—a grave error as far as John Adams was concerned. Adams complained that the Pandect lacked an index and was therefore almost unusable. Ayliffe, however, paved the way for generations of classical Roman law studies.



DANIEL R. COQUILLETTE RARE BOOK ROOM

CABINET V & VI

FROM FRANCIS BACON TO
CHARLES DICKENS:
THE CIVILIAN INFLUENCE

Book V-1

Francis Bacon, Viscount St. Albans
RESUSCITATIO (London, 1671).

Francis Bacon (1561-1626) would have accepted being known as a great scientist, author, philosopher, and Lord Chancellor—but not as a civilian. Nonetheless, he studied the works of the English civilian writers closely and his own work reflected their tradition. Bacon's reform efforts, particularly for the codification of all the laws, reports, and decisions of English law, owed a debt to the civilians. He wanted to cull "out all that was archaic, irrelevant, inapplicable, and redundant." The remaining "laws, forms and procedures representative of current juridical and social realities" were to be organized into "institutes" which, like those of Justinian, would become the new basis of teaching common law.

Book V-2

Gilbert Burnett
THE LIFE AND DEATH OF SIR MATTHEW HALE...LORD CHIEF JUSTICE (London, 1682).

Sir Matthew Hale (1609-1676) studied under Selden and went on to become the greatest common lawyer since Coke. Like Selden and Bacon, Hale would have deplored being seen as a civilian. Indeed, in his Preface to Rolle's Abridgement (1668), he attracted the civilians. He preferred incremental legal developments to analytical theorists and "Modells of Laws." Hale noted that, although the "particulars" of the common law were not "easily reducible into a Scholastic method, . . . they recompence that Inconvenience by their particularity and useful Application to particular Occasions." But in his pioneering efforts at the scientific arrangement of legal principles and in his grasp of comparative legal history, Hale owed a debt to the civilians. In this respect, Hale's work had lasting influence on American jurists such as Joseph Story and Christopher Columbus Langdell.

Book V-3

John Selden

DE IURE NATURALE & GENTIUM (London, 1640).

John Selden (1584-1654) disliked the civilians' pretensions to a monopoly on learning and feared the civil law's political identification with continental absolutism. However, he also was deeply read in civilian texts. Although Selden opposed a direct reception of the civil law, he appreciated the importance of civil law as a source of ideas. In his works on international law, his inductive, utilitarian approach was influenced by civilians like Gentili, Fulbecke and Ridley. In De Jure Naturale & Gentium, Selden compared ancient Hebrew law with Roman law and with the history of the actual relations among nation states. He concluded that there is both a "primative" or "natural" law of nations, and a "secondary" law which arises from compacts and usages. The pages shown here reveal the diverse sources Selden used.

Book V-4

Charles Molloy

DE JURE MARITIMO ET NAVALI: OR TREATISE OF AFFAIRS MARITIME AND OF COMMERCE (London, 1707).

Charles Molloy (1646-1690) was a leading common law scholar who popularized civilian merchant law. His treatise, De Jure Maritimo et Navali: or Treatise of Affairs Maritime and of Commerce, was widely read and cited as an authority in the American colonies on such issues as maritime bills of exchange and insurance policies.

Illustration

MICROCOSM OF LONDON (London: Rudolph Ackermann, 1808) vol. 1, p. 224.

This hand-colored illustration of Doctors' Commons was engraved by the famous caricaturist, Thomas Rowlandson (1756-1827). The door on the right leads to the library where a Proctor and a Doctor can be seen—drinking. The influence of the civilians and Doctors' Commons reached beyond England to the colonies, as revealed below. And its intellectual legacy—the belief in a rational, essentially progressive, universal legal science—remains with us today.

Yet by the nineteenth century, as demonstrated by Charles Dickens, the institution of Doctors' Commons had become a mere shadow of its glorious self. On January 15, 1585, after more than three centuries of life at the heart of commercial London, Doctors' Commons became extinct. Its great library, perhaps the finest international law library in Europe at the time, was scattered and sold. Its buildings were destroyed, and the London telephone exchange is now on the site. A few relics still remain, displayed in the case to your right.

Book VI-1

THE LAWS AND LIBERTIES OF MASSACHUSETTS (Cambridge: Harvard University Press, M. Farrand ed. 1929).

The civilians' influence spread beyond England. The early Puritan settlers of Massachusetts were fluent in Latin and had civilian sources in the early Harvard College Library. These are reflected in their early radical efforts to codify the colony laws in The Laws and Liberties of 1648.

Book VI-2

D. IUSTINIAN'S INSTITUTIONUM, CURA ET STUDIO,
ARNOLDI VINNII (Amsterdam, 1603) (Elzevir Press).

Like many early American lawyers, the future President John Adams (1735-1826) studied civilian sources carefully as a young law student. Adams quoted civilian theory in his law practice, particularly in the colonial vice-admiralty court and in his political writings. He refers to a Vinnius edition of Justinian's Institutes in his Diary.

Book VI-3

Charles Dickens

BLEAK HOUSE (London, 1853).

At 16, Charles Dickens (1812-1870) covered Doctors' Commons as a freelance journalist.

In David Copperfield (1849), he described it as

a little out-of-the-way place where they administer what is called ecclesiastical law, and play all kinds of tricks with obsolete old monsters of acts of parliament, which three-fourths of the world know nothing about, and the fourth suppose to have been dug up, in a fossil state, in the days of the Edwards. It's a place that has an ancient monopoly in suits about people's wills and people's marriages, and disputes about ships and boats.

Dickens' great Bleak House (1853) advocated major legal reforms, and his influence on the codification movement of the nineteenth century was similar to civilian advocacy in the centuries before. The copy here is a first edition.



DANIEL R. COQUILLETTE RARE BOOK ROOM

CABINET VII

MEMORIES OF DOCTORS' COMMONS

VII-1

WILL

The civilians had a stronghold over legal practice in the ecclesiastical and admiralty courts. These monopolies gave them control of lucrative practice areas such as probate, matrimonial, and estate law. All wills in the Archdiocese of London were stored at Doctors' Commons until the Court of Probate Act and Matrimonial Causes Act of 1857. This will was drafted and enrolled at Doctors' Commons on March 16, 1843.

Book VII-2

John Entick

A NEW AND ACCURATE SURVEY OF LONDON,
WESTMINSTER AND SOUTHWARK (London, 1761), p. 93.

This illustration shows St. Mary le Bow, close to Doctors' Commons. It was near here that the civilians first began to meet collectively by 1500. Its crypt was the site of the ecclesiastical "Court of the Arches" and is the trial court for canonical causes to this day.

Books VII-3, 4, 5 & 6

CATALOGUE OF THE BOOKS IN THE LIBRARY OF THE COLLEGE OF ADVOCATES IN DOCTORS' COMMONS (London, 1818).

REPORTS AND CASES TAKEN IN THE THIRD, FOURTH, FIFTH, SIXTH AND SEVENTH YEARS OF THE LATE KING CHARLES, collected by Sir Thomas Hetley (London, 1657).

John Nichols

A COLLECTION OF ALL THE WILLS ... OF THE KINGS AND QUEENS OF ENGLAND (London, 1780).

THE SEVERAL OPINIONS OF SUNDRY LEARNED ANTIQUARIES TOUCHING ... THE HIGH-COURT OF PARLIAMENT (London, 1658).

The great library of Doctors' Commons contained comparative law, legal history, and international law. The three books displayed here contain bookplates from the library. In 1818, the library prepared a catalogue of its books. Hetley's *Reports* is listed as entry D365 and the *Opinions* as entry C89. When the library was dispersed many of the books went to other courts and libraries. The *Reports*, for example, went to the Admiralty Court, as indicated by the marking on the edges. The *Collection of Wills*, acquired by Doctors' Common after the 1818 Catalogue, was a gift to Professor Coquillette by the Deans' Meeting on his resignation as Dean in 1994.

Book VII-7

PANDECTARUM IURIS CIVILIS (Panu, 1559).

This Roman law book belonged to an early civilian of Doctors' Commons, Robert Byshop, D.C.L. Dr. Byshop was admitted to Doctors' Commons on May 5, 1570 and died on January 17, 1590. Another book owned by Byshop appears in Case III. Byshop's initials appear on the binding. Just like students today, sixteenth-century students of law wrote in their books. Byshop's additions were intended to make the book more useful: he wrote his own index to the book on the page facing the title.

Book VII-8

Charles Knight ed.

LONDON (London, 1851), vol. 5, p. 7.

This illustration of the Hall of Doctors' Commons appeared shortly before the last twenty-six surviving English civilians voted to distribute the assets of their professional organization to themselves. One member, Dr. John Lee, argued that the centuries of accumulated property in books, armorial relics, and portraits should be regarded as a public trust. He lost the argument. Upon dissolution, each member received about 4000 pounds—a not inconsiderable sum. The money might have been even more but for the "Swabey affair." In 1853, Henry B. Swabey, the Deputy Registrar of the Admiralty Registry of Doctors' Commons had disappeared with 75,000 pounds embezzled from various escrow funds.



DANIEL R. COQUILLETTE RARE BOOK ROOM

CABINET VIII

BOOKS AND FACULTY SCHOLARSHIP
AFTER THE REVOLUTION

Book VIII-1

THE PERPETUAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, FROM THE COMMENCEMENT OF THE CONSTITUTION IN OCTOBER, 1780, TO THE LAST WEDNESDAY IN MAY, 1789 (Boston: Adams and Nourse, 1789).

Professor Charles ("Buzzy") Baron used this collection of Massachusetts laws in his current work on the Massachusetts Constitution. Original arrangements of state laws are essential to his historical interpretation of the Constitution.

Massachusetts, like many other states, moved rapidly to publish laws following the Declaration of Independence in 1776. This volume demonstrates the long tradition of viewing the Declaration as a crucial founding document. The book begins with a copy of the Declaration of Independence. It also contains a copy of the Massachusetts Constitution and the United States Constitution. The copy of the United States Constitution appears in its form in 1789 — without the familiar Bill of Rights. The Bill of Rights was not passed in Congress until September 1789, and was adopted following ratification by the states in 1791.

Book VIII-2

Joseph Chitty

A TREATISE ON THE LAW OF BILLS OF EXCHANGE, CHECKS ON BANKERS, PROMISSORY NOTES, BANKERS' CASH NOTES, AND BANK-NOTES (London, 1799).

Professor James Steven Rogers made use of this volume, and many other early works on the law of bills and notes and related subjects, in his book, The Early History of the Law of Bills and Notes (1995). Rogers' book challenges the traditional theory that English commercial law developed by incorporation of the concept of negotiability and other rules from an ancient body of customary law known as the law merchant. Rogers shows that the law of bills was developed within the common law system itself, in response to changing economic and

business practices. Early works on the law of bills played an important role in supporting this thesis in that they provided a basis for determining the types of issues that lawyers of the time regarded as important in the emerging law of bills of exchange.

Prior to Joseph Chitty's treatise, most writers in the commercial law area were civilian scholars or merchants. As commercial law became increasingly systematized under general legal principles in the late eighteenth century, lawyers like Chitty began to dominate the treatises in the field. Chitty became a model for American practice manuals in the commercial law area.

Books VIII-3 & 4

John Marshall

THE WRITINGS OF JOHN MARSHALL, LATE CHIEF JUSTICE OF THE UNITED STATES, UPON THE FEDERAL CONSTITUTION (Boston: James Munroe and Company, 1839).

Timothy Farrar

REPORTS OF THE CASE OF THE TRUSTEES OF DARTMOUTH COLLEGE AGAINST WILLIAM WOODWARD (Portsmouth: John W. Foster & West, Richardson, and Lord, 1819).

Professor Ingrid Michelsen Hillinger, along with the other editors of the John Marshall Papers, used this collection of Marshall's cases as a resource tool to annotate John Marshall's law cases for Volume V of the John Marshall Papers, Selected Law Cases, 1784-1800. Professor Sharon O'Connor used reports similar to this Reports of Dartmouth College in preparing the Guide to the Early Reports of the Supreme Court of the United States.

John Marshall (1755-1835) served on the United States Supreme Court from 1801-1835. During his tenure, the Court began to develop into the prestigious and powerful modern institution. Many of Marshall's opinions are famous for this development — Marbury v. Madison (1801),

McCulloch v. Maryland (1819), Gibbons v. Ogden (1824). As important as the decisions themselves, however, was the decision to systematize the publication of cases. Prior to Marshall's tenure, few cases of the Supreme Court were published. Alexander Dallas, as the first unofficial reporter, struggled to compile the Court's opinions from lawyers' notes. Marshall, along with Justice Joseph Story, worked to achieve consistent publication of Supreme Court opinions, culminating in the appointment of Henry Wheaton as the Supreme Court Reporter in 1817.

The volumes illustrate that the decisions of the Supreme Court were believed to be of critical importance, not just to the lawyer, but also to the average citizen's understanding of the new Republic. The editor of Marshall's opinions notes that he published with the hope of placing "within reach of all his fellow-citizens some of the best writings of one of the greatest and best men that have lived in America." Farrar similarly argued that the decision in Dartmouth was of "importance to every other literary and charitable corporation of our country."

Book VIII-5

Alexis de Tocqueville

DEMOCRACY IN AMERICA (New York: George Dearborn & Co., 1838).

In his article, "The Overlooked Middle," Professor Thomas C. Kohler used Alexis de Tocqueville's Democracy in America to highlight the effects of the recent decline of labor mediating institutions on society as a whole. Professor Kohler's use of de Tocqueville to explain this modern phenomena reinforces the continued vitality of the book, first published over 160 years ago. Long considered the standard source for generalizing about America, de Tocqueville's treatise on American laws, constitutions, and politics remains a prophetic and cautious examination of the role of the individual in democratic society.

Book VIII-6

Oliver Wendell Holmes, Jr.

THE COMMON LAW (Boston: Little, Brown, 1923).

Professor Catharine Wells has written a number of articles on Justice Oliver Wendell Holmes, including "Holmes on Legal Method: The Predictive Theory of Law as an Instance of Scientific Method" (1994) and "Legal Innovation within the Wider Intellectual Tradition: The Pragmatism of Oliver Wendell Holmes, Jr." (1988).

Oliver Wendell Holmes, Jr. (1841-1935) served on the Supreme Court from 1902 to 1932. During this time he wrote more opinions (873) than any other justice, including Schenck v. United States (1919), Abrams v. United States (1919), and Pennsylvania Coal v. Mahon (1922). His dissent in Lochner v. New York (1905) influenced the Supreme Court for the rest of the century. He is equally known for his legal commentary. In 1881, he published The Common Law, often called the greatest work of American legal scholarship. His scholarly work influenced the legal realist school of jurisprudence in the early twentieth century and continues to influence legal scholars today.

Book VIII-7

THE DEBATES AND PROCEEDINGS IN THE CONGRESS OF THE UNITED STATES; WITH AN APPENDIX, CONTAINING IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS, AND ALL THE LAWS OF A PUBLIC NATURE; WITH A COPIOUS INDEX, compiled by Joseph Gales (Washington: Gales and Seaton, 1834).

Professor Kent Greenfield used this collection of debates from Congress in his article "Original Penumbra: Constitutional Interpretation in the First Year of Congress" (1993) to show that members of the First Congress used a broad range of interpretive methodology in construing the Constitution and did not consider original intent dispositive. For example, during the debate concerning the power of the President to remove executive officials, James Madison based his constitutional arguments on non-textual, thematic reasoning.

This collection provides other interesting information about the early Congresses. Congress did not always meet in Washington. Prior to the adoption of the Constitution, Congress moved from Philadelphia to Princeton to Annapolis to Trenton to New York City. During most of the period represented by this volume (1789-1791), Congress was meeting in New York. Congress moved to Philadelphia around 1790 and then to Washington in 1800. Today, television displays the proceedings of the Senate; however, the compiler notes that the Senate met behind closed doors until February 1794. This volume is part of the Annals of Congress extending until 1824. After 1824, the series continued to develop and in 1874, this series became known by its current title, The Congressional Record.

Lobby Display Case

Guillaume Durand

SPECULUM IUDICIALE (Basel Frobenil, 1574).

Professor Frank Herrmann, S.J., used this text to research articles on medieval precursors to the English right of confrontation and rules against hearsay in Romano-canonical procedure.

The Speculum Iudiciale is a vast thirteenth-century compilation of criminal, civil, and canon law. Durand wrote the Speculum around 1271. The Speculum synthesized Roman and Canon Law. The marginal notations ("glosses") were added in the fourteenth century by two eminent scholars, Giovanni Andrea and Baldo degli Ubaldi. The Speculum had a major influence in the courts and law schools of Western Europe into the seventeenth century.

This text is a photo-reprint of the 1574 edition. Because of the difficulty and expense involved in purchasing rare books, many libraries supplement their rare book collections with facsimile editions of texts. Unlike microfiche or microfilm, photo-reprints permit the researcher to use the text as it was used hundreds of years ago.

Charles Viner

**A GENERAL ABRIDGMENT OF LAW AND EQUITY,
ALPHABETICALLY DIGESTED UNDER PROPER TITLES; WITH
NOTES AND REFERENCES TO THE WHOLE
(London: 2d ed.1793), volume 16, p. 23.**

In his book, Environmental Law & Policy: Nature, Law, & Society (1992), Professor Plater analyzed the different balances courts applied in determining whether to issue injunctions against injurious activities. He began by analyzing the old winner-take-all terms of the seventeenth-century common law cases, where the candle factory did not have to modify its practices or pay damages ("because there is no nusans"). *Ranketts Case*, was the starting point for Professor Plater's thesis. He compared these early cases

with later cases in which more public harms appeared in the balance, and damages were given even where injunctions were denied.

Professor Plater found the case in Rolle's Abridgement des Plusiers Cases et Resolutions del Commun Ley (2 vols., 1668). Written in law French, these volumes attempted to organize in a systematic way summaries of cases from the earliest *Yearbooks* to contemporary seventeenth-century case reports. These abridgments would evolve into three different modern legal research tools - the legal encyclopedias, treatises, and case digests. While the library does not own Rolle's Abridgement, it does own a later abridgment, Viner's General Abridgment of Law and Equity (1791). In his multi-volume collection, Viner also included a summary of *Ranketts Case*. Charles Viner was the founder of the Vinerian Lecture in the University of Oxford. The first Vinerian Professor was the famous William Blackstone, appointed in 1758.